

# CRS Report for Congress

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### Proliferation Security Initiative (PSI)

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#### Summary

The Proliferation Security Initiative (PSI) is now three years old. Initially, 11 nations pledged their cooperation in interdicting shipments of weapons of mass destruction-related (WMD) materials; more than 70 nations now support PSI. Many observers believe PSI's "strengthened political commitment of like-minded states to follow through" is a successful approach to countering proliferation, although details about PSI are sketchy. The 109<sup>th</sup> Congress has introduced eight bills supporting PSI. The State Department credits PSI with halting 11 WMD-related transfers from 2004 to 2005, and more than 2 dozen from 2005 to 2006. This report will be updated as needed.

#### Background<sup>1</sup>

In the December 2002 National Strategy to Combat Weapons of Mass Destruction (WMD) Proliferation, the Bush Administration highlighted its more activist approach. While noting that traditional nonproliferation measures such as diplomacy, arms control, threat reduction assistance, and export controls should be enhanced, the strategy placed increasing emphasis on countering proliferation once it has occurred and managing the consequences of WMD use. In particular, interdiction of WMD-related goods gained more prominence. U.S. policy sought to "enhance the capabilities of our military, intelligence, technical, and law enforcement communities to prevent the movement of WMD materials, technology, and expertise to hostile states and terrorist organizations."<sup>2</sup>

President Bush unveiled the Proliferation Security Initiative (PSI) in Krakow, Poland, on May 31, 2003. Deemed "foremost among President Bush's efforts to stop WMD proliferation," PSI appears to be a new channel for interdiction cooperation outside of treaties and multilateral export control regimes.<sup>3</sup> It may informally expand the number

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<sup>1</sup> This update was prepared with the assistance of Jill Marie Parillo, research associate.

<sup>2</sup> White House, *National Strategy to Combat Weapons of Mass Destruction (WMD)*, December 2002 p. 2.

<sup>3</sup> John R. Bolton, former Under Secretary for Arms Control and International Security, Testimony Before the House International Relations Committee, "The Bush Administration's (continued...)

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of cooperating countries without expanding membership in export control groups (Nuclear Suppliers' Group, Australia Group, and the Missile Technology Control Regime).

Ten nations initially joined the United States to improve cooperation to interdict shipments (on land, sea, or in the air) of WMD, their delivery systems, and related materials. Six other nations joined subsequently, although Denmark and Turkey did not join as “core members” (see **Table 1** below). According to State Department officials, the core group defined the basic principles of interdiction and worked to expand support, but was disbanded in August 2005 after India complained of discrimination among PSI members. The United States is strongly encouraging India to join PSI, but with little success so far.<sup>4</sup>

**Table 1. PSI Founding Members**

North America	Europe	Asia/Pacific
Canada	Denmark (not core)	Australia*
United States*	France*	Japan*
	Germany*	Singapore
	Italy*	
	Netherlands*	
	Norway	
	Poland*	
	Portugal*	
	Russia	
	Spain*	
	Turkey (not core)	
	United Kingdom*	

**Note:** \* Denotes member since 2003.

**Source:** U.S. Department of State.

The Bush Administration often states that more than 70 nations support the initiative<sup>5</sup>, but it is unclear what “support” means. According to information released by the State Department, requirements for support appear to be fairly weak. For example, participating states are *encouraged* to (emphasis added in italics):

- formally commit to and publicly endorse, *if possible*, the Statement of Principles;
- review and provide information on current national legal authorities and *indicate willingness* to strengthen authorities as appropriate;
- identify specific national assets that *might* contribute to PSI efforts;
- provide points of contact for interdiction requests;

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<sup>3</sup> (...continued)

Nonproliferation Policy: Successes and Future Challenges,” March 30, 2004.

<sup>4</sup> Valencia, Mark J., “The Proliferation Security Initiative: Making Waves in Asia,” *The International Institute for Security Studies*, October 200, pg.66.

<sup>5</sup> See [<http://www.whitehouse.gov/news/releases/2006/06/20060623.html>]

- *be willing* to actively participate in PSI interdiction training exercises and actual operations as they arise;
- *be willing* to consider signing relevant agreements or to otherwise establish a concrete basis for cooperation with PSI efforts.<sup>6</sup>

PSI has no international secretariat, no offices in federal agencies established to support it, no database or reports of successes or failures, and no established funding. Many consider the lack of formal mechanisms an advantage and point instead to high-level meetings in Europe, Australia and the United States, the agreement on a set of principles in September 2003, and cooperative exercises to test interdiction procedures.<sup>7</sup> Others, however, question the seriousness of the Administration's effort as well as its sustainability, as long as no formal mechanisms are created.<sup>8</sup> The current configuration holds nothing particularly to bind PSI adherents to this cooperative endeavor.

Since its inception, there has been little by which to measure PSI's success. Secretary of State Rice, on the second anniversary of PSI, announced that PSI was responsible for 11 interdictions in the previous nine months.<sup>9</sup> On June 23, 2006, Under Secretary for Arms Control and International Security Robert Joseph reported that between April 2005 and April 2006 PSI partners worked together "on roughly two dozen separate occasions to prevent transfers of equipment and materials to WMD and missile programs in countries of concern."<sup>10</sup> He also said that PSI cooperation stopped exports to Iran's missile program and the export of heavy water-related equipment to Iran's nuclear program. However, it is unclear how this achievement compares with efforts conducted prior to the initiative. Even if PSI has resulted in more interdictions than before, can this be attributed to the success of PSI or an upsurge in proliferation activity?

Nonetheless, many observers believe PSI is a good effort. The 9/11 Commission recommended that the United States seek to expand PSI's membership;<sup>11</sup> the European Union and the G-8 fully endorse PSI;<sup>12</sup> and several proposed bills in the 109<sup>th</sup> Congress have specifically called for expansion of PSI or support for PSI (S.Con.Res. 36, H.Con.Res. 133, S.Con.Res. 40, H.R. 422, H.R. 665, H.R. 5017/S. 3456 and S. 2566). The FY 2006 Foreign Operations, Export Financing, and Related Programs Appropriations Act (P.L. 109-102) authorized the use of Nonproliferation Antiterrorism

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<sup>6</sup> U.S. Department of State, Fact Sheet, "Proliferation Security Initiative Frequently Asked Questions (FAQ)," May 26, 2005, available at [<http://www.state.gov/t/np/rls/fs/46839.htm>]

<sup>7</sup> See [<http://www.state.gov/t/np/rls/fs/23764.htm>] for Statement of Interdiction Principles and [<http://www.state.gov/t/np/c12684.htm>] for a calendar of all PSI activities.

<sup>8</sup> See transcript from Senate Government Affairs Committee, Subcommittee on Budget and International Security hearing on WMD and counterproliferation, June 23, 2004.

<sup>9</sup> See [<http://www.state.gov/secretary/rm/2005/46951.htm>] for the text of Secretary Rice's speech.

<sup>10</sup> Under Secretary for Arms Control and International Security Robert Joseph, Warsaw, Poland, June 23, 2006. Available at [<http://www.state.gov/t/us/rm/68269.htm>]

<sup>11</sup> *Report of the 9/11 Commission*, p. 381.

<sup>12</sup> G8 Leaders Join for 2006 G8 Statement on Nonproliferation, July 19, 2006. See [<http://www.cdi.org/friendlyversion/printversion.cfm?documentID=3595>]. Joint Statement by the European Union and United States, June 20, 2005. See [<http://www.whitehouse.gov/news/releases/2005/06/20050620.html>]

Demining and Related Programs funds for PSI activities, and H.R. 5017 and S. 3456 would authorize \$50 million to conduct joint training exercises.

## PSI Objectives, Methods, and Targets

PSI's long-term objective is to "create a web of counterproliferation partnerships through which proliferators will have difficulty carrying out their trade in WMD and missile-related technology."<sup>13</sup> The Bush Administration has emphasized that PSI is an activity, not an organization, which seeks to develop "new means to disrupt WMD trafficking at sea, in the air, and on land."<sup>14</sup> However, very few new means of disruption appear yet to have been developed, although old means may be applied more rigorously. There are differing opinions on enhancing international legal authority for interdictions on the high seas and in international airspace. Some states prefer to continue working on PSI within existing international law, whereas others (like the U.S.) would like to enhance or change international law to expand the capability to interdict potential WMD-related transfers.

Several approaches may help improve interdiction efforts. First, participating states have agreed to review their own relevant national legal authorities to ensure that they can take action. Second, participating states resolve to take action, and to "seriously consider providing consent...to boarding and searching of its own flag vessels by other states."<sup>15</sup> Third, participating states seek to put in place agreements, such as ship-boarding agreements, with other states in advance, so that no time is lost should interdiction be required. So far, the United States has signed ship-boarding agreements in 2004 with Panama, the Marshall Islands, and Liberia, and in 2005 with Croatia, Cyprus, and Belize. Such arrangements typically allow two hours to deny U.S. personnel the right to board a ship; the United States reportedly has consulted with two dozen countries on ship-boarding agreements.<sup>16</sup> A fourth approach is to conduct interdiction exercises. PSI participants reportedly have trained for "maritime interdiction in the Mediterranean, Arabian Sea, and Western Pacific Ocean, all areas that are particularly prone to proliferation trafficking."<sup>17</sup> In all, PSI has conducted 23 joint interdiction exercises as of August 2006.<sup>18</sup>

As many describe it, PSI relies on the "broken tail-light scenario:" officials look for all available options to stop suspected transport of WMD or WMD-related items. In practice, cargos can be seized in ports if they violate the host state's laws, hence the focus on strengthening domestic laws. On the high seas, ships have the rights of freedom of the seas and innocent passage under the Law of the Sea Convention and customary

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<sup>13</sup> Bolton, March 30, 2004 HIRC testimony.

<sup>14</sup> Ibid.

<sup>15</sup> See September 2003 Statement of Interdiction Principles.

<sup>16</sup> Interview with State Department official, April 28, 2004. The following states have flags of convenience: Antigua and Barbuda, Aruba (NL), Bahamas, Barbados, Belize, Bermuda (UK), Burma, Cambodia, Canary Islands (Spain), Cayman Islands (UK), Cook Islands (NZ), Cyprus, German International Ship Register (GIS), Gibraltar (UK), Honduras, Lebanon, Liberia, Luxembourg, Malta, Marshall Islands (US), Mauritius, Netherlands Antilles, Panama, St. Vincent, Sri Lanka, Tuvalu, Vanuatu.

<sup>17</sup> Bolton, March 30, 2004 HIRC testimony.

<sup>18</sup> See list of all activities at [<http://www.state.gov/t/isn/c12684.htm>]

international law. The boarding agreements may allow for boarding, but not necessarily cargo seizure.<sup>19</sup> According to a State Department lawyer, as of 2005, no authority had been worked out to legally seize cargo. In addition, a key gap in the PSI framework is that it applies only to commercial, not government, transportation. Government vehicles (ships, planes, trucks, etc.) cannot legally be interdicted. Thus, the missile shipments picked up by a Pakistani C-130 in the summer of 2002 in North Korea, reported by the New York Times in November 2002, could not have been intercepted under PSI.

The October 2003 interdiction of a shipment of uranium centrifuge enrichment parts from Malaysia to Libya illustrates the need for multilateral cooperation. The Malaysian-produced equipment was transported on a German-owned ship, BBC China, leaving Dubai, passing through the Suez Canal. The ship was diverted into the Italian port of Taranto, where it was searched. Passage through the highly-regulated Suez Canal may give authorities an opportunity to delay ships and find a reason to board them.

In an interview in November 2003, then-Secretary Bolton suggested that WMD interdiction would target shipments to rogue states and terrorists that pose the most immediate threat.<sup>20</sup> In the case of rogue states, it may be relatively easy to target shipments to Iran and North Korea and their transhipment points, but targeting terrorist acquisitions may place a serious strain on intelligence gathering.

On February 11, 2004, President Bush proposed expanding PSI to address more than shipments and transfers, including “shutting down facilities, seizing materials, and freezing assets.”<sup>21</sup> To some observers, it is difficult to imagine how national authorities could shut down facilities, seize materials, and freeze assets, particularly if the material and equipment in question is dual-use (which would normally place the burden on the export destination). However, on April 28, 2004, the U.N. Security Council passed UNSC Resolution 1540, which requires all states “to criminalize proliferation, enact strict export controls and secure all sensitive materials within their borders.”<sup>22</sup> UNSCR 1540 called on states to enforce effective domestic controls over WMD and WMD-related materials in production, use, storage, and transport; to maintain effective border controls; and to develop national export and trans-shipment controls over such items, all of which should help interdiction efforts. The resolution did not, however, provide any enforcement authority, nor did it specifically mention interdiction or PSI. In April 2006, the U.N. Security Council adopted Resolution 1673 which extended the mandate of the 1540 Committee for two years and asked the Committee to formally report to the Security Council, no later than April 27, 2008, a “compilation of information on the status of States’ implementation of all aspects of resolution 1540.”<sup>23</sup>

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<sup>19</sup> See CRS Report RL32097, *Weapons of Mass Destruction Counterproliferation: Legal Issues for Ships and Aircraft*.

<sup>20</sup> “The Proliferation Security Initiative: An Interview with John Bolton,” *Arms Control Today*, December 2003.

<sup>21</sup> See [<http://www.whitehouse.gov/response/index.html>] for text of President’s speech.

<sup>22</sup> See [[http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)] for text of UNSCR 1540.

<sup>23</sup> See [[http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)] for the text of S/RES/1673 (2006), April 17, 2006.

Another approach has been to target financial assets. In June 2005, President Bush issued Executive Order 13382 which prohibits U.S. persons from doing business with entities designated because of their proliferation activities.<sup>24</sup> On June 23, 2006, 66 PSI states participated in a High Level Political Meeting in Poland, which focused on developing closer ties with the business community to further prevent any financial support to the proliferation of WMD.<sup>25</sup>

## Issues for Congress

Members of the 109<sup>th</sup> Congress introduced eight bills and resolutions that call for strengthening, expanding, and funding PSI (S.Con.Res. 36, H.Con.Res. 133, S.Con.Res. 40, H.R. 422, H.R. 665, H.R. 5017/S. 3456, P.L. 109-102 (Section 599A), and S. 2566). Geographic expansion is a key issue — particularly how to engage China and India, as well as states in important regions like the Arabian Peninsula.<sup>26</sup> Congress may also consider how intelligence resources are handled. Is intelligence sufficient and are there intelligence-sharing requirements with non-NATO allies? Also, how is PSI coordinated with other federal interdiction-related programs (e.g., export control assistance)? One potential complication for congressional oversight of PSI is the absence of a way to measure PSI's success, relative to past efforts.

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<sup>24</sup> See [<http://www.whitehouse.gov/news/releases/2005/06/20050629.html>] for text of Executive Order 13382, June 29, 2005.

<sup>25</sup> See "Cracow Proliferation Security Initiative High Level Political Meeting," Summary from the Polish government. [<http://www.psi.msz.gov.pl/index.php?&PHPSESSID=50078a65ad2acf1dd3d7f518b7148e58>]

<sup>26</sup> "The Proliferation Security Initiative: Three Years On," *British American Security Information Council*, August 2, 2006. See [<http://www.basicint.org/pubs/Notes/BN060802.pdf#search=%22%20august%20psi%20basic%20notes%22>]